

ADOPTED BY THE RIO NUEVO
MULTIPURPOSE FACILITIES DISTRICT
BOARD OF DIRECTORS
April 13, 2005

RESOLUTION NO. 2005-06

RESOLUTION APPROVING THE SECOND AMENDMENT TO THE
DECEMBER 9, 2002 INTERGOVERNMENTAL, DEVELOPMENT AND LEASE
AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF
THE HISTORIC FOX THEATRE.

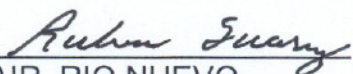
BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE RIO NUEVO
MULTIPURPOSE FACILITIES DISTRICT, AS FOLLOWS:

SECTION 1: The Second Amendment to the Intergovernmental Development
and Lease Agreement for Restoration, Operation and Management of the
Historic Fox Theatre (the "Second Amendment"), among the District, the City of
Tucson and the Fox Tucson Theatre Foundation, a copy of which is attached to
this Resolution as Exhibit 1, is hereby approved.

SECTION 2: The District Chair is hereby authorized, empowered and directed to
execute and deliver, and the District Secretary is hereby authorized, empowered
and directed to attest, the Second Amendment in substantially the form of Exhibit
1, or with such changes therein as may be approved by the Chair, as
conclusively evidenced by his execution and delivery thereof.

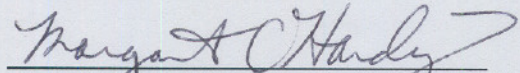
SECTION 3: The various District officers and employees are hereby authorized
and empowered to perform all acts necessary or desirable to give effect to this
Resolution.

PASSED, ADOPTED, AND APPROVED this 13th day of April
2005.



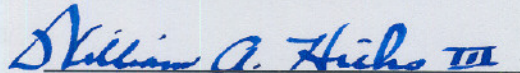
CHAIR, RIO NUEVO
MULTIPURPOSE FACILITIES
DISTRICT BOARD

ATTEST:




SECRETARY OF THE RIO NUEVO
MULTIPURPOSE FACILITIES
DISTRICT BOARD

APPROVED AS TO FORM:



COUNSEL FOR RIO NUEVO
MULTIPURPOSE FACILITIES
DISTRICT BOARD

REVIEWED BY:



DIRECTOR, RIO NUEVO
MULTIPURPOSE FACILITIES
DISTRICT BOARD

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: J_V
DEPUTY RECORDER
4437 PE2

CCCLK
TUCSON CITY CLERK
PICK UP



DOCKET: 12557
PAGE: 2382
NO. OF PAGES: 3
SEQUENCE: 20050980474
05/20/2005
RES 14:49

PICKUP

AMOUNT PAID \$ 7.00

ADOPTED BY THE
MAYOR AND COUNCIL

April 12, 2005

RESOLUTION NO. 20053

RELATING TO INTERGOVERNMENTAL AGREEMENTS; AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF TUCSON THE SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY, THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT, AND THE FOX TUCSON THEATRE FOUNDATION ENTITLED INTERGOVERNMENTAL DEVELOPMENT AND LEASE AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF THE HISTORIC FOX THEATRE; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Second Amendment to the Intergovernmental Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre, attached to this Resolution as Exhibit 1, is approved.

SECTION 2. The Mayor shall execute, and the City Clerk shall attest to, the Second Amendment to the Intergovernmental Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre.

SECTION 3. The various City officers and employees shall perform all acts necessary or desirable to give effect to this resolution.

SECTION 4. The City Manager may execute such other documents as may be required to give effect to this Resolution and the Second Amendment to the

ENCLOSURE

Certificate of Clerk
• *City of Tucson* •

State of Arizona
County of Pima

} ss

I, Kathleen S. Detrick, the duly appointed and qualified City Clerk of the City of Tucson, Arizona, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20053 which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on April 12, 2005 at which a quorum was present.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on May 16, 2005.

Total of 2 page(s) certified
Exhibit not included

Kathleen S Detrick
City Clerk

F. ANN RODRIGUEZ, RECORDER
RECORDED BY: J V
DEPUTY RECORDER
4437 PE2

CCCLK
TUCSON CITY CLERK
PICK UP



DOCKET: 12557
PAGE: 2385
NO. OF PAGES: 4
SEQUENCE: 20050980475
05/20/2005
AAG 14:49

PICKUP

AMOUNT PAID \$ 7.00

SECOND AMENDMENT TO INTERGOVERNMENTAL DEVELOPMENT AND LEASE
AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF THE
HISTORIC FOX THEATRE

THIS AGREEMENT is entered into by and among the City of Tucson ("Tucson"), the Río Nuevo Multipurpose Facilities District ("District"), and the Fox Tucson Theatre Foundation ("Fox"). Tucson, District and Fox are sometimes collectively referred to in this Agreement as the "Parties".

RECITALS

A. Tucson is a municipal corporation of the State of Arizona.

B. The District is a multipurpose facilities district established pursuant to Arizona Revised Statutes (A.R.S.) § 48-4201 *et seq.*, to revitalize Río Nuevo, the heart of downtown Tucson, financed in part with tax increment financing in accordance with A.R.S. §§ 42-5031 and 48-4237.

C. Fox is an IRS-recognized 501(c)(3) Arizona non-profit organization governed by a volunteer Board of Directors and a paid professional Executive Director.

D. On December 9, 2002, Tucson adopted Resolution No. 19449 approving an intergovernmental agreement and on December 4, 2002, the District adopted a resolution approving the same intergovernmental agreement (the "IGA").

E. On March 22, 2005, Tucson adopted Resolution No. 20039 approving an amendment to that IGA and on March 9, 2002, the District adopted a resolution approving the same IGA. The IGA and the amendments made to the IGA are collectively referred to as the "IGA".

F. Certain technical amendments need to be made to the IGA to allow Fox to qualify for preservation tax credits.

G. This Agreement amends the IGA as specifically set out below. All provisions in the IGA not specifically amended shall remain in full force and effect.

H. District has the authority to acquire and dispose of property and interests in property pursuant to A.R.S. § 48-4203.

I. The Parties expressly find and determine that the terms of this Agreement are justified based on the other consideration provided under this Agreement, including, without limitation, the rights and liabilities conferred and imposed on the Parties and the economic development benefits to the community resulting from this Agreement.

AGREEMENT

NOW, THEREFORE, BASED ON THE FOREGOING RECITALS, WHICH ARE INCORPORATED HERE AS THE INTENTION OF THE PARTIES IN ENTERING INTO THIS AGREEMENT, and in consideration of the terms of this Agreement, the Parties agree as follows:

1. Paragraph 4(a) of the IGA is amended to read as follows:

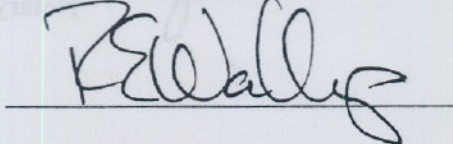
"4. Tax Increment Financing and Funding Obligations.

EX-1 TO RESOLUTION NO. 20053

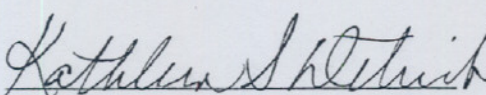
3. Paragraph 46 of the IGA is amended to read as follows:

"46. *Assignment and Subletting.* Fox shall not sublet all or any portion of the Historic Fox Theatre without District's prior written consent. Fox may assign all of its rights, duties, and obligations under this Agreement to any entity which acquires all or substantially all of Fox's assets by reason of a merger, acquisition, or other business reorganization, which shall not be deemed a third party assignment so long as such successor entity continues to manage and operate the Historic Fox Theatre in a manner consistent with this Agreement. A third party assignment shall require District's consent and District agrees not to withhold or delay such consent if to do so would be commercially unreasonable. Consent by District to any assignment or subletting shall not constitute a waiver of the necessity of such consent to any subsequent assignment or subletting. If the Historic Fox Theatre or any part thereof is sublet or occupied by anyone in addition to Fox, District may, following an uncured default by Fox, collect rent from the assignee, sublessee, or occupant and apply the net amount collected to the financial obligations of Fox under this Agreement, but no such assignment, subletting, occupancy, or collection shall be deemed a waiver or release of Fox from the further performance by Fox of the covenants on the part of Fox contained in this Agreement. If Fox enters into a sublease or assignment of this Agreement, District reserves the right to hold Fox jointly and severally liable along with the assignee or sublessee under any and all of the terms, covenants, conditions, and obligations contained in or derived from this Agreement, including those arising out of any act, occurrence, or omission occurring after said assignment. District expressly agrees to permit assignment of Fox's interest under this Agreement to a partnership formed for the purpose of raising equity through the sale of preservation tax credits and to one or more subleases required to effectuate the tax-credit investment. An agreement between Fox and a performing troupe using the Historic Fox Theatre for a show or series of shows shall not be considered an assignment or sublease for purposes of this paragraph.

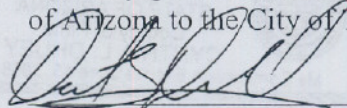
"Tucson"
CITY OF TUCSON



ATTEST:


City Clerk Date 4-12-05

This agreement has been submitted to the undersigned attorney for the City of Tucson, who has determined that this agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the City of Tucson.


Assistant City Attorney Date 4-7-05

**AMENDMENT TO INTERGOVERNMENTAL, DEVELOPMENT AND LEASE
AGREEMENT FOR RESTORATION, OPERATION AND MANAGEMENT OF
THE HISTORIC FOX THEATRE**

THIS AGREEMENT is entered into by and among the City of Tucson ("**Tucson**"), the Río Nuevo Multipurpose Facilities District ("**District**"), and the Fox Tucson Theatre Foundation ("**Fox**"). Tucson, District and Fox are sometimes collectively referred to in this Agreement as the "**Parties**".

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B. The District is a multipurpose facilities district established pursuant to Arizona Revised Statutes (A.R.S.) § 48-4201 *et seq.*, to revitalize Río Nuevo, the heart of downtown Tucson, financed in part with tax increment financing in accordance with A.R.S. §§ 42-5031 and 48-4237.

C. Fox is an IRS-recognized 501(c)(3) Arizona non-profit organization governed by a volunteer Board of Directors and a paid professional Executive Director.

D. On December 9, 2002, the City adopted Resolution No. 19449 approving an intergovernmental agreement and on December 4, 2002, the District adopted a resolution approving the same intergovernmental agreement (the "**IGA**").

E. Pursuant to the IGA, Fox is restoring the historic Fox Theatre located at the northeast corner of Congress Street and Church Avenue in downtown Tucson (the "**Historic Fox Theatre**") and more particularly described in Paragraph 1 of the IGA.

F. District and Tucson have provided funding and assistance in support of the restoration of the Historic Fox Theatre pursuant to the IGA and desire, after a request by Fox, to provide additional financial and technical assistance to Fox.

G. This Agreement amends the IGA as specifically set out below. All provisions in the IGA not specifically amended shall remain in full force and effect.

H. District has the authority to acquire and dispose of property and interests in property pursuant to A.R.S. § 48-4203.

I. The Parties expressly find and determine that the terms of this Agreement are justified based on the other consideration provided under this Agreement, including, without limitation, the rights and liabilities conferred and imposed on the Parties and the economic development benefits to the community resulting from this Agreement.

not equal One Million Five Hundred Thousand Dollars (\$1,500,000.00), Fox shall pay the District the difference between One Million Five Hundred Thousand Dollars (\$1,500,000.00) and the amount Fox has actually paid the District.

(B) At the end of the fifteen (15) year period, Fox shall pay to the District an amount to be determined by the District based on the outstanding balance of the amount paid to Fox pursuant to Paragraph 4(a)(i) less the amount paid by Fox to the District pursuant to Paragraph 4(a)(i)(A) and plus the interest accumulated on the debt service of the funds provided by the District pursuant to Paragraph 4(a)(i).

(ii) establish an account in an amount not less than Five Hundred Thousand Dollars (\$500,000.00), to be called the "Construction Contingency Account", that can be used by the District to pay for significant construction costs that are not contemplated by the construction contract with Concord. The balance, if any, of such account will be paid to Fox after the Lease Commencement, when a like amount is matched by Fox, to capitalize an Operating Reserve.

(b) Prior to funding the amount provided by Subparagraph (a)(i), Fox shall perform the following:

(i) Deliver to the District an irrevocable assignment of the contracts it has with Concord and Erickson, Leader, and Associates.

(ii) In a form acceptable to the District, assign and subordinate all construction management rights and responsibilities of the Historic Fox Theatre contained in its contracts with Concord and Erickson, Leader, & Associates to the District.

(iii) Hire and retain a development director approved by the District.

(iv) In a form acceptable to the District and Tucson, provide a conditional tax credit equity investor commitment letter to the District in an amount sufficient to complete the renovation of the Theatre, such amount to be determined by the District.

(v) Deliver in a form acceptable to the District a written commitment requiring Fox to transfer ownership of the Star Building to District by special warranty deed, subject to all liens and encumbrances and those title matters set forth in Exhibit 2, upon the earlier of Fox's refinancing of the mortgage financed by Bank One and secured by a deed of trust on the Star Building or eighteen (18) months after the date of Fox's receipt of the funds described in Subparagraph (a)(i). Upon transfer of the Star Building, Fox shall continue to, and the written commitment shall require that Fox, pay all amounts required pursuant to any liens and encumbrances and shall hold the District and City harmless should Fox default on any such liens and encumbrances. Payments on all indebtedness secured by the Star Building and adjoining vacant land shall be considered to be a financial obligation of Fox pursuant to Paragraph 32. Fox may use and occupy this property

receive a like amount from as a grant from the U.S. Department of Housing and Urban (HUD) Development. The Fox shall repay the District this amount immediately upon receipt of the grant from HUD or, in the event such grant is rescinded or otherwise not funded by HUD or other federal governmental agency, by July 1, 2006.

(e) In consideration for the funding provided for in this Agreement, Fox shall not:

(i) allow the Theatre to be closed or have less than an average of 2 revenue-generating events per week over any 6-month period; or

(ii) allow any encumbrances or liens against the property referred to in Paragraph 1 or on improvements on such property without express written consent from the District."

3. Paragraph 7 of the IGA is amended to read as follows:

"7. *Leaseback to Fox.* District leases the property referred to in Paragraph 1 to Fox or to an entity which is owned and controlled by Fox for a period of fifty years beginning on the day (referred to in this Agreement as the "**Lease Commencement**") that Tucson issues a certificate of occupancy for a place of assembly at the Historic Fox Theatre for 1000 persons (see Paragraph 24). The fifty-year period of time from Lease Commencement to the end of the lease is referred to in this Agreement as the "**Lease Term**"."

4. Paragraph 13 of the IGA is amended to read as follows:

"13. *Fox's Repurchase Option.*

(a) Except as provided in Subparagraph (b), from the fifteenth anniversary of Lease Commencement to the one-year anniversary of the termination of this Agreement (see Paragraph 65), Fox may at its option repurchase the Historic Fox Theatre from District by paying the appraised fair market value but not less Three Million Five Hundred Thousand Dollars (\$3,500,000.00) divided by four hundred twenty (420) and multiplied by the number of months remaining in the Lease Term plus ten dollars.

(b) The repurchase option shall not be available until the funds provided by Paragraph 4(a) are satisfactorily repaid or while Fox is in default under this Agreement (see paragraph 32). This Agreement shall terminate upon Fox's exercise of the repurchase option."

5. Paragraph 24 of the IGA is amended to read as follows:

"24. *Construction Schedule.* Construction of the Historic Fox Theatre restoration shall be substantially complete not later than December 31, 2005. District and Tucson may grant reasonable extensions in their sole discretion so long as the District and Tucson are satisfied that substantial and diligent progress has been and is being made in the restoration and fundraising. For purposes of this Paragraph, the Historic Fox Theatre restoration shall be substantially complete when Tucson issues a temporary certificate of occupancy for a place of assembly at the Historic Fox Theatre for 1000 persons."

6. Paragraphs 32 and 33 of the IGA are amended to read as follows:

"32. *Fox Default.* Fox shall be in default under this Agreement if it:

a. fails to pay any financial obligation imposed by this Agreement, Rent, Impositions, or any combination thereof when due; or

"District"
RÍO NUEVO MULTIPURPOSE FACILITIES
DISTRICT

Ruben D Suarez
Chairman

ATTEST:

(see notarization)

Clerk

Date

This agreement has been submitted to the undersigned attorney for the Río Nuevo Multipurpose Facilities District, who has determined that this agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Board.

William A. Hicks III 4-6-05
Attorney to District Date

"Fox"
FOX TUCSON THEATRE FOUNDATION

State of Arizona)
County of Pima) ss

ER Patterson
Ellie Patterson, President

STATE OF ARIZONA)
County of Pima) ss.



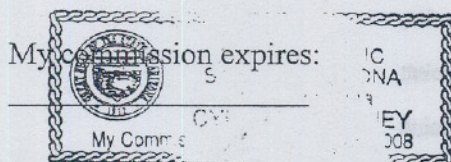
Subscribed and sworn to before me this 1st day of April, 2005 by Ruben Suarez.

SYLVIA CARBAJAL
NOTARY PUBLIC-ARIZONA
PIMA COUNTY
My Comm. Exp. Dec. 30, 2006

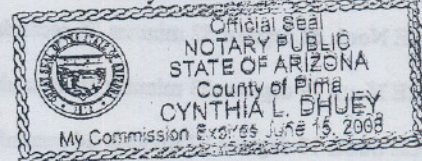
Sylvia Carbajal
NOTARY PUBLIC

April 1, 2005

SUBSCRIBED AND SWORN TO BEFORE ME this 29 day of March, 2005 by Ellie Patterson, President of the Fox Tucson Theatre Foundation, on behalf of the corporation.



Cynthia L. Dhuey
Notary Public



EXHIBITS

1. Legal description of the Historic Fox Theatre
2. Legal description of the Star Building and adjoining vacant land.

THENCE South 07 degrees 49 minutes 28 seconds East a distance of 49.04 feet to the POINT OF TERMINATION.

Parcel II

An overhead easement located 19 feet above the existing finish floor and extending 50 feet above the existing finish floor described as follows:

All that part of Block 196 of the City of Tucson, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said city (then Village) of Tucson, on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at page 70, described as follows:

COMMENCING at the present established Southeast corner of said Block 196, being at the Northwest corner of North Stone Avenue and Congress Street;

THENCE Westerly upon the North line of Congress Street, a distance of 12.74 feet;

THENCE continuing upon said North line of Congress Street, South 83 degrees 08 minutes 39 seconds West a distance of 56.70 feet to a point;

THENCE North 06 degrees 51 minutes 21 seconds West a distance of 83.23 feet to the POINT OF BEGINNING;

THENCE South 89 degrees 39 minutes 22 seconds West a distance of 8.73 feet to a point;

THENCE North 10 degrees 00 minutes 05 seconds West a distance of 18.50 feet to a point;

THENCE North 11 degrees 57 minutes 03 seconds West a distance of 26.83 feet to a point;

THENCE North 82 degrees 41 minutes 14 seconds East a distance of 4.00 feet to a point;

THENCE North 07 degrees 18 minutes 46 seconds West a distance of 1.28 feet to a point;

THENCE North 83 degrees 30 minutes 14 seconds East a distance of 8.15 feet to a point;

THENCE South 06 degrees 49 minutes 35 seconds East a distance of 46.09 feet to the POINT OF BEGINNING.

Parcel III

A street level easement for pedestrian access and utilities over, upon and across all that part of Block 196 of the City of Tucson, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said city (then Village) of Tucson, on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at page 70, described as follows:

COMMENCING at the present established Southeast corner of said Block 196, being at the Northwest corner of North Stone Avenue and Congress Street;

THENCE Westerly upon the North line of Congress Street, a distance of 12.74 feet;

THENCE continuing upon said North line of Congress Street, South 83 degrees 08 minutes 39 seconds West a distance of 61.09 feet to a point;

THENCE North 06 degrees 51 minutes 21 seconds West a distance of 48.55 feet to the POINT OF BEGINNING;

EXHIBIT 2

LEGAL DESCRIPTION

That portion of Lot 9 in Block 196 of City of Tucson, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said city (then Village) of Tucson, on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at Page 70 thereof, described as follows:

BEGINNING at the Southwest corner of Lot 9; thence Northerly along the West boundary thereof a distance of 54.16 feet to the POINT OF BEGINNING;

THENCE Easterly and parallel with the South boundary line of Lot 9 to the West boundary of that portion of Lot 9 conveyed to Lyric Realty Company by Deed recorder in Book 137 of Deeds of Real Estate at page 110;

THENCE Northerly along the Westerly boundary line of said property to the Northwest corner of said property and being on the North line of Lot 9;

THENCE Westerly along the Northerly line of Lot 9 to the Northwest corner thereof;

THENCE Southerly along the Westerly line of Lot 9 to the POINT OF BEGINNING;

TOGETHER WITH

All that portion of Lot 9, Block 196 of the CITY OF TUCSON, Pima County, Arizona, according to the official survey, field notes, and map as made and executed by S. W. Foreman and approved and adopted by the Mayor and Common Council of said city (then Village) of Tucson, on June 26, 1872, a certified copy of which map is of record in the office of the County Recorder of Pima County, Arizona, in Book 3 of Maps and Plats at page 70, described as follows:

BEGINNING at the Southwest corner of Lot 9;

THENCE Northerly along the West boundary of said Lot 9, a distance of 29.5 feet;

THENCE Easterly and parallel with the South boundary line of said Lot 9 to a point on the West boundary line of the property described in Deed recorded in Book 137 of Deeds at page 110;

EXHIBIT 2 TO

EX 1 TO RESOLUTION NO. 20039

THENCE Southerly and parallel with the East line of Lot 8, a distance of 7 feet;

THENCE Easterly and parallel with the North line of Lot 8, a distance of 7 feet;

THENCE Northerly a distance of 7 feet to the POINT OF BEGINNING.